IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 3635 of 2004(G)

PETITIONERS:
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1. SUNNYKUTTY SEBASTIAN, L.P.S.A.,
ST.JOSEPH U.P.SCHOOL, VELLIYAMATTOM,
IDUKKI DISTRICT

2. BINDU SEBASTIAN, L.P.S.A.,
ST.THOMASU.P.SCHOOL, NEERANTHANAM.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, GOVERNMENT SECRETARIAT, TRIVANDRUM

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
TRIVANDRUM

3. THE DISTRICT EDUCATIONAL OFFICER,
PALA.

4. THE ASSISTANT EDUCATIONAL OFFICER,
RAMAPURAM.

5. THE CORPORATE MANAGER, DIOCESE OF PALA,
PALA.

BY ADV. SRI.GEORGEKUTTY MATHEW --- R5
GOVERNMENT PLEADER SMT. T.B. RAMANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 3635/2004 G

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE APPOINTMENT ORDER OF THE P1 DT. 19/6/00 BY THE R6 AND APPROVAL THERE OF.

EXT.P2. COPY OF THE APPOINTMENT ORDER DT. 7/9/01 BY R5 IN RESPECT OF P1.

EXT.P3. COPY OF THE APPOINTMENT ORDER (EXTENSION) DT. 19/1/02 BY R5 IN RESPECT OF P1.

EXT.P4. COPY OF THE ORDER REJECTING APPROVAL DT. 1/11/01 BY R4 IN RESPECT OF THE P1.

EXT.P5. COPY OF THE ORDER REJECTING APPROVAL DT. 15/1/2003 BY R4 IN RESPECT OF THE P1.

EXT.P6. COPY OF THE NO. ORDERD T. 24/07/02 BY R3 REJECTING THE APPEAL FILED BY THE MANAGER.

EXT.P7. COPY OF THE ORDER DT. 20/6/03 BY R3 REJECTING THE APPEAL FILED BY THE MANAGER.

EXT.P8. COPY OF THE ORDER NO. K.DIS 155225/02/F5/DPI DT. 20/1/2003 OF THE R2.

EXT.P9. COPY OF THE GO RT NO. 4048/03/GEN DT. 7/10/03 OF THE R1.

EXT.P10. COPY OF THE REVISION FILED BY THE R5 BEFORE THE R2 DT. 7/09/03.

EXT.P11. COPY OF THE REVISION PETITION DT. 18/6/03 FILED BY THE MANAGER BEFORE THE R2.

EXT.P12. COPY OF THE APPOINTMENT ORDER DT. 1/11/2001 IN RESPECT OF THE P2 BY THE R5.

EXT.P13. COPY OF THE ORDER NO. C. 3169/01 REJECTING APPROVAL OF EXT. P12 BY R4 DT. 21/11/01.

EXT.P14. COPY OF THE ORDER NO. B1/7926/2001/L.DIS DT. 13/5/2002 BY R3.

EXT.P15. COPY OF THE ORDER K. DIS 63617/02/F5/DPI DT. 18/1/2003 BY R2.

EXT.P16. COPY OF THE GO RT NO. 4047/03/GED.N DT. 7/10/03 BY THE R1.

EXT.P17. COPY OF THE ORDER DT. 25/7/2001 APPOINTING SMT. SUJA ANTONY AS LPSA BY R5.

True copy

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Thottathil B. Radhakrishnan, J.

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W.P.(C)No.3635 of 2004-G

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Dated this the 5th day of July, 2007.

JUDGMENT

Petitioners, as of now, challenge Ext.P9. The first petitioner was appointed on 19-6-2000 as an LPSA in a leave vacancy. That spread till 31-3-2001. That appointment was approved. On the strength of that approved appointment, he was a 51-A claimant and was accordingly appointed in a leave vacancy from 7-9-2001 to 18-1-2002. The incumbent, who had proceeded on maternity leave, sought for extension of maternity leave. That was granted. As a consequence, the petitioner was again appointed for the period from 19-1-2002 to 19-3-2002. The lap of appointment from 7-9-2001 to 18-1-2002 and the immediately following lap from 19-1-2002 to 19-3-2002 were not approved on the ground that prior sanction was not obtained for making such appointment. Prior sanction was required to

make a fresh appointment. That was essentially part of the executive decision of the Government. However, Rule 51 A in Chapter XIV A KER gave the first petitioner the entitlement for preferential appointment and a maternity leave vacancy needs to be filled up. Therefore, the Manager cannot be found fault with for having made the appointment of the first petitioner for the period from 7-9-2001 to 18-1-2002 and from 19-1-2002 to 19-3-2002 giving effect to the priority that he has on account of Rule 51 A of Chapter XIV A. Even if it is to be treated that such priority would come into play only when the management proceeds to make the appointment, it cannot be treated that the ban of appointment is intended to affect those vacancies, which arise out of maternity leave during an academic year. Any such view will militate against the requirement of running school.

2. In so far as the second petitioner is concerned, the period from 1-11-2001 to 26-3-2002 for which she was appointed was also against the maternity leave vacancy. The executive direction of the Government that prior approval should be obtained for making appointment would not affect that vacancy because that was a maternity leave vacancy and for reasons stated above, the appointment of the petitioners to the maternity leave vacancy was obviously in the interest of the running academic session.

3. For the aforesaid reasons, the periods from 7-9-2001 to 18-1-2002 and 19-1-2002 to 19-3-2002 as regards the first petitioner and the appointment period from 1-11-2001 to 26-3-2002 as regards the second petitioner are liable to be approved. It is so declared.

4. In the result, Exts.P4 to P9 and Exts.P13

to P16 are quashed and it is directed that the appointments of the petitioners will stand approved and necessary approval orders shall be issued by the competent authority within a period of one month from the date of receipt of a copy of this judgment.

Writ petition is allowed as above. No costs.

Thottathil B.Radhakrishnan,
sl. Judge.

Thottathil B. Radhakrishnan, J.

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W.P.(C)No.3635 of 2004-G
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JUDGMENT

Dated:5-7-2007